

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

Rev. DeROISE J. WASHINGTON,
D.D.,

Petitioner,

V.

ROBERT HOUSTON, Director,
State of Nebraska Department of
Correctional Services,

Respondent.

4:07CV3125

MEMORANDUM AND ORDER

This matter comes before the Court on the respondent's motion (filing 17) to amend filing 11, the Memorandum and Order dated August 13, 2007. I will grant the motion.

IT IS ORDERED that:

- I. The motion in filing 17 is granted; and
- II. Paragraphs 6, 7, and 8 of filing 11 are hereby amended and restated as follows, with the language that differs from that in filing 11 highlighted in bold:
- (6) If the respondent elects to file a motion for summary judgment, the following procedures shall be followed by the respondent and the petitioner:

- A. The motion for summary judgment shall be accompanied by a separate brief, **submitted at the time of the filing of the motion.**
- B. The motion for summary judgment shall be supported by such state court records as are necessary to support the motion. Those records shall be contained in a separate filing entitled: “Designation of State Court Records in Support of Motion for Summary Judgment.”
- C. Copies of the motion for summary judgment, the designation, including state courts records, and the respondent’s brief shall be served upon the petitioner *except* **that respondent is only required to provide the petitioner with a copy of the specific pages of the record which are cited in the respondent’s brief. In the event that the designation of state court records is deemed insufficient by the petitioner, the petitioner may file a motion with the court requesting additional documents. Such motion shall set forth the documents requested and the reasons the documents are relevant to the cognizable claims.**
- D. No later than 30 days following the filing of the motion for summary judgment, the petitioner shall file and serve a brief in opposition to the motion for summary judgment. The petitioner shall submit no

other documents unless directed to do so by the court.

E. No later than **30** days after the filing of the petitioner's brief, the respondent shall file and serve a reply brief.

F. If the motions for summary judgment is denied, the respondent shall file an answer, a designation and a brief that complies with terms of this order. (*See* the following paragraph.) The documents shall be filed no later than 30 days after the denial of the motion for summary judgment. The respondent is warned the failure to file an answer, a designation and a brief in a timely fashion may result in the imposition of sanctions including the release of the petitioner.

(7) If the respondent files an answer, the following procedures shall be followed by the respondent and the petitioner:

A. **No later than 30 days after the filing of the answer, respondent shall file a separate brief.** Both the answer and brief shall address all matters germane to the case including, but not limited to, the merits of the petitioner's allegations that have survived initial review, and whether any claim is bared by a failure to exhaust state remedies, a procedural bar, non-retroactivity, a statute of limitations, or because the petition is an unauthorized second or successive petition. *See,*

e.g., Rules 5(b) and 9 of the *Rules Governing Section 2254 Cases in the United States District Courts*.

- B. The answer shall be supported by all state court records **which are relevant to the cognizable claims**. *See, e.g.*, Rule 5(c)-(d) of the *Rules Governing Section 2254 Cases in the United States District Courts*. Those records shall be contained in separate filing entitled: “Designation of State Court Records In Support of Answer.”
- C. Copies of the answer, the designation, and the respondent’s brief shall be served upon the **petitioner, except that respondent is only required to provide the petitioner with a copy of the specific pages of the designated record which are cited in the respondent’s brief. In the event that the designation of state court records is deemed insufficient by the petitioner, the petitioner may file a motion with the court requesting additional documents. Such motion shall set forth the documents requested and the reasons the documents are relevant to the cognizable claims.**
- D. No later than 30 days following the filing **of respondent’s brief**, the petitioner shall file and serve a brief in response. The petitioner shall

submit no other documents unless directed to do so by the court.

E. No later than **30** days after the filing of the petitioner's brief, the respondent shall file and serve a reply brief.

(8) No discovery shall undertaken without leave of the court. *See Rule 6 of the Rules Governing Section 2254 Cases in the United States District Courts.*

September 24, 2007

BY THE COURT:

s/Richard G. Kopf
United States District Judge